

In the Matter of	)	File Number EB-03-KC-030
	)	
Wanda Doonan Trust	)	NAL/Acct. No.200332560018
Owner of Antenna Supporting Structure 1203563	)	
Great Bend, Kansas	)	FRN 0006-1633-98
	)	

## NOTICE OF APPARENT LIABILITY FOR FORFEITURE

**Released:** March 3, 2003

By the Enforcement Bureau, Kansas City Office:

### I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Wanda Doonan Trust, owner of antenna supporting structure # 1203563 located at 2650 Main St. in Great Bend, Kansas, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Wanda Doonan Trust apparently liable for failure to repaint the antenna structure as often as necessary to maintain good visibility.

### II. BACKGROUND

2. On February 12, 2003, the antenna structure bearing no FCC antenna structure registration number (“ASR”) and located at or near geographic coordinates 38° 22’ 42”N / 098° 45’ 52”W in Great Bend, Kansas, was inspected by an agent of the Commission’s Kansas City Field Office. The Commission’s ASR database showed this structure was registered to Wanda Doonan Trust and that the tower required marking and lighting. At the time of the inspection the paint on the tower was badly faded and peeling, resulting in poor visibility of the structure.

3. On February 24, 2003, the agent interviewed Mr. John Mann of Doonan Trucking, who stated the tower was leased to a communications company that was entirely responsible for all tower painting and lighting.

### III. DISCUSSION

4. Section 17.50 of the Rules states that antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. Wanda Doonan Trust is the registered owner of antenna structure number 1203563 and is responsible for maintaining the structure’s marking.<sup>2</sup> The ASR for this structure requires that the structure be painted. On February 12, 2003, the Wanda Doonan Trust failed to maintain good visibility of the

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<sup>1</sup> 47 C.F.R. § 17.50.

<sup>2</sup> See 47 C.F.R. § 17.6(a).

antenna structure. Based on the evidence before us, we find the Wanda Doonan Trust willfully<sup>3</sup> and repeatedly<sup>4</sup> violated Section 17.50 of the Rules by failing to clean or repaint the antenna structure as often as necessary to maintain good visibility of the antenna structure markings.

5. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failure to comply with the prescribed marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Wanda Doonan Trust is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Rules by failing to clean or repaint the antenna structure as often as necessary to maintain good visibility of the antenna structure markings.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Wanda Doonan Trust SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>4</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>9</sup> See 47 C.F.R. § 1.1914.

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Wanda Doonan Trust, %Mr. Steve Dillinger, Doonan Truck and Equipment Inc., Hwy 56 & 156 Jct., Great Bend, KS. 67530.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney  
Kansas City Office  
Enforcement Bureau

Attachment